

AMENDED IN ASSEMBLY JUNE 18, 2012

AMENDED IN SENATE MAY 27, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 890

Introduced by Senator Leno

(Coauthors: Assembly Members Butler and Wieckowski)

February 18, 2011

An act to add Title 1.6C.5 (commencing with Section 1788.50) to Part 4 of Division 3 of the Civil Code, and to amend Sections 700.010, 706.103, 706.104, 706.108, and 706.122 of, and to add ~~Sections~~ *Section* 581.5 to, the Code of Civil Procedure, relating to debt buyers.

LEGISLATIVE COUNSEL'S DIGEST

SB 890, as amended, Leno. Debt buyers.

(1) Existing state and federal law regulate the practice of debt collection. Existing state law prohibits a debt collector from engaging in specified conduct, including the use of threats or causing a telephone to ring repeatedly to annoy the person called. Existing law prohibits a debt collector from obtaining an affirmation from a debtor of a consumer debt that has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, the fact that the debtor is not legally obligated to make such affirmation.

This bill would enact the Fair Debt Buyers Practices Act, which would regulate the activities of a person or entity that has bought consumer debt and the circumstances in which the person may bring suit. The bill would prohibit a debt buyer, as defined, from making any written statement in an attempt to collect a consumer debt unless the debt buyer

~~has valid evidence in the form of business records~~ *possesses information* that the debt buyer is the sole owner of the specific debt at issue, the ~~amount of the debt~~ *balance, as specified*, and the name of the creditor at the time the debt was charged off, among other things. The bill would require the debt buyer to make ~~this evidence~~ *certain documents* available to the debtor, without charge, upon receipt of a request, within 15 days. The bill would ~~prohibit a debt buyer from communicating with a debtor in writing without providing a specified notice~~ *require that a specified notice be included with the debt buyer's first written communication with the debtor*. The bill would require all settlement agreements between a debt buyer and a debtor to be *documented in open court or otherwise* in writing and would require a debt buyer who receives a payment on a debt to provide a receipt or statement containing certain information. The bill would prohibit a debt buyer from initiating a suit to collect a debt if the statute of limitations on the cause of action has expired. The bill would prescribe penalties for a violation of the act and would provide that its provisions may not be waived. The bill would require a debt buyer bringing an action on consumer debt to include certain information in his or her complaint. The bill would prohibit an entry of judgment in favor of a plaintiff debt buyer unless properly authenticated business records relating to the debt and ownership of it, among other things, are properly in evidence, and would permit a court to dismiss a debt buyer's action to collect with prejudice if this information is not provided or if the debt buyer fails to appear or is not prepared on the date scheduled for trial.

(2) Existing law establishes a process for the enforcement of money judgments and requires a levying officer to provide certain documents and information to a judgment debtor and to a designated employer in connection with wage garnishment. Existing law permits a process server also to serve an earnings withholding order on an employer and requires that the process server also serve certain documents at this time. Existing law requires an employer who is served with an earnings withholding order to provide certain documents to an employee who is a judgment debtor.

This bill would require, in the circumstances described above, that a copy of the form that the judgment debtor may use to make a claim of exemption and a copy of the form used to provide a financial statement also be provided.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Title 1.6C.5 (commencing with Section 1788.50)~~
2 ~~is added to Part 4 of Division 3 of the Civil Code, to read:~~

3
4 ~~TITLE 1.6C.5. FAIR DEBT BUYERS PRACTICES ACT~~
5

6 ~~1788.50. (a) As used in this title, “debt buyer” means a person~~
7 ~~or entity that regularly purchases charged-off consumer loans or~~
8 ~~consumer credit accounts, or other delinquent consumer debt.~~
9 ~~“Debt buyer” includes a person acting on behalf of a debt buyer.~~

10 ~~(b) Terms defined in Title 1.6C (commencing with Section~~
11 ~~1788) shall apply to this title.~~

12 ~~1788.51. The requirements and remedies of this title are~~
13 ~~cumulative to those in Title 1.6C (commencing with Section 1788)~~
14 ~~as well as any other law.~~

15 ~~1788.52. (a) A debt buyer shall not make any written statement~~
16 ~~in an attempt to collect a consumer debt unless the debt buyer has~~
17 ~~in its possession evidence, in the form of business records, all of~~
18 ~~the following:~~

19 ~~(1) That the debt buyer is the sole owner of the specific debt or~~
20 ~~account at issue.~~

21 ~~(2) The amount of the debt allegedly owed by the debtor,~~
22 ~~including an itemized accounting of all post-charge-off fees and~~
23 ~~charges.~~

24 ~~(3) The name of the creditor at the time of charge-off.~~

25 ~~(4) The name and address of the debtor as it appeared on the~~
26 ~~charge-off creditor’s records.~~

27 ~~(5) The charge-off creditor’s account number associated with~~
28 ~~the debt.~~

29 ~~(6) If the debt is purchased on or after January 1, 2012, a copy~~
30 ~~of the contract or other document evidencing the debtor’s~~
31 ~~agreement to the debt or, if the claim is based on debt for which~~
32 ~~no such signed writing evidencing the original agreement exists,~~
33 ~~then copies of documents demonstrating that the debt was incurred~~
34 ~~by the person receiving the written statement.~~

35 ~~(b) A debt buyer shall provide a copy of the evidence described~~
36 ~~in subdivision (a) to the debtor, without charge, within 15 calendar~~
37 ~~days of receipt of a debtor’s request for the evidence. A debt buyer~~
38 ~~shall also provide a copy of the materials described in paragraph~~

1 ~~(1) or (2) of subdivision (b) of Section 1788.60 to the debtor,~~
2 ~~without charge, within 10 business days of receipt of the debtor's~~
3 ~~request for the materials.~~

4 ~~(c) A debt buyer shall not communicate with a debtor in writing~~
5 ~~in an attempt to collect a time-barred debt without clearly and~~
6 ~~conspicuously providing the following written notice in at least~~
7 ~~12-point boldface type on the first page of the debt buyer's first~~
8 ~~communication with the debtor.~~

9

10 ~~“BECAUSE OF THE PASSAGE OF TIME, WE MAY NOT~~
11 ~~SUE IN COURT, OR COMMENCE AN ARBITRATION OR~~
12 ~~OTHER PROCEEDING, ON DEBT THAT IS BARRED BY A~~
13 ~~STATUTE OF LIMITATIONS. YOU SHOULD CONSULT AN~~
14 ~~ATTORNEY, VISIT A LOCAL SELF-HELP CENTER, OR VISIT~~
15 ~~WWW.COURTINFO.COM/SELFHLP FOR MORE~~
16 ~~INFORMATION.”~~

17

18 ~~1788.54. (a) All settlement agreements between a debt buyer~~
19 ~~and a debtor shall be in writing. A debt buyer that receives payment~~
20 ~~on a debt shall provide a receipt or monthly statement to the~~
21 ~~individual from whom payment is received within 15 calendar~~
22 ~~days of payment. The receipt or statement shall clearly and~~
23 ~~conspicuously show the amount and date paid, the name of the~~
24 ~~entity paid, the current account number, the name of the charge-off~~
25 ~~creditor, and the account number issued by the charge-off creditor,~~
26 ~~and the remaining balance owing, if any.~~

27 ~~(b) If a debt buyer accepts a payment as payment in full or as~~
28 ~~a full and final compromise of the debt, a final statement that~~
29 ~~complies with subdivision (a) shall be provided to the debtor within~~
30 ~~15 calendar days.~~

31 ~~1788.56. A debt buyer shall not bring suit, or initiate an~~
32 ~~arbitration or other legal proceeding, to collect a consumer debt if~~
33 ~~the applicable statute of limitations on the debt buyer's claim has~~
34 ~~expired.~~

35 ~~1788.58. In an action brought by a debt buyer on a consumer~~
36 ~~debt:~~

37 ~~(a) The plaintiff shall disclose clearly and conspicuously on the~~
38 ~~face of the complaint that the plaintiff is a debt buyer.~~

39 ~~(b) The complaint shall include all of the following:~~

1 ~~(1) A short statement, written in simple language, describing~~
2 ~~the nature of the underlying debt and the consumer transaction~~
3 ~~from which it is derived.~~

4 ~~(2) All of the information set forth in paragraphs (2) to (5),~~
5 ~~inclusive of subdivision (a) of Section 1788.52.~~

6 ~~(3) An allegation that the debt buyer is the sole current owner~~
7 ~~of the debt, and setting forth the names of any and all previous~~
8 ~~owners of the debt.~~

9 ~~(4) An allegation that the debt is not barred by the applicable~~
10 ~~statute of limitations.~~

11 ~~(e) In an action on a consumer debt, a debt buyer shall attach~~
12 ~~to the complaint a copy of the contract or other writing evidencing~~
13 ~~the original debt, signed by the defendant, unless the debt buyer~~
14 ~~provides a sworn declaration that the documents could not be~~
15 ~~obtained prior to the time of filing suit. If a claim is based on credit~~
16 ~~card debt and a signed writing evidencing the original debt does~~
17 ~~not exist, then copies of any documents generated when the credit~~
18 ~~card was actually used shall be attached.~~

19 ~~1788.60. (a) In an action initiated by a debt buyer, prior to the~~
20 ~~entry of a judgment against a debtor, including a default judgment,~~
21 ~~the plaintiff shall clearly and conspicuously disclose to the court~~
22 ~~that it is a debt buyer and shall provide admissible evidence~~
23 ~~satisfactory to the court to establish the amount and nature of the~~
24 ~~debt and the identity of the debtor, including all of the information~~
25 ~~described in subdivision (b).~~

26 ~~(b) For the purpose of this section, the only evidence sufficient~~
27 ~~to establish the amount and nature of the debt shall be properly~~
28 ~~authenticated business records that the court determines are~~
29 ~~sufficient to satisfy the requirements of Sections 1271 and 1272~~
30 ~~of the Evidence Code. The authenticated business records shall~~
31 ~~include the following items:~~

32 ~~(1) A copy of the contract or other writing evidencing the~~
33 ~~original debt, signed by the defendant. If a claim is based on debt~~
34 ~~for which a signed writing evidencing the original debt does not~~
35 ~~exist, then copies of documents demonstrating that the debt was~~
36 ~~incurred by the defendant.~~

37 ~~(2) A copy of a writing, including, but not limited to, the bill of~~
38 ~~sale, establishing that the debt buyer is the sole current owner of~~
39 ~~the debt and showing from which entity the debt was acquired. If~~
40 ~~the debt has been sold more than once after being charged off,~~

1 ~~admissible written evidence shall be provided to establish an~~
2 ~~unbroken chain of ownership interests. Each writing shall contain~~
3 ~~the original account number of the debt sold or purchased, which~~
4 ~~shall be redacted for security purposes in accordance with Rule~~
5 ~~1.20 of the California Rules of Court.~~

6 ~~(3) The account number at time of charge-off.~~

7 ~~(4) The name of the charge-off creditor.~~

8 ~~(5) The account balance at the time of charge-off.~~

9 ~~(6) An itemization of post-charge-off fees and charges claimed~~
10 ~~to be owed.~~

11 ~~(7) The date of last payment, if any.~~

12 ~~(8) The amount of interest claimed and the basis for the interest~~
13 ~~charged.~~

14 ~~(9) The alleged date of default.~~

15 ~~(e) In any action on a consumer debt, if the plaintiff who is a~~
16 ~~debt buyer seeks a default judgment and has not complied with~~
17 ~~the requirements of this section, the court shall not enter a default~~
18 ~~judgment for the plaintiff and may, in its discretion, dismiss the~~
19 ~~action with or without prejudice.~~

20 ~~(d) In any action on a consumer debt, a debt buyer shall have~~
21 ~~the burden of pleading and of proving that the applicable statute~~
22 ~~of limitations has not expired. Before entering a judgment in the~~
23 ~~action, the court shall determine on the record that the applicable~~
24 ~~statute of limitations has not expired.~~

25 ~~1788.62. (a) Except as otherwise provided by this section, a~~
26 ~~debt buyer who violates any provision of this title is liable to the~~
27 ~~person who suffers the violation in an amount equal to the sum of~~
28 ~~the following:~~

29 ~~(1) Any actual damage sustained by the person.~~

30 ~~(2) The amount established pursuant to either subparagraph (A)~~
31 ~~or (B):~~

32 ~~(A) The case of any action by an individual, such additional~~
33 ~~damages as the court may allow, but not more than two thousand~~
34 ~~dollars (\$2,000) per action.~~

35 ~~(B) In the case of a class action, the amount for each named~~
36 ~~plaintiff that could be recovered under subparagraph (A) and an~~
37 ~~amount that the court may determine for the class, not to exceed~~
38 ~~the lesser of five hundred thousand dollars (\$500,000) or 1 percent~~
39 ~~of the fair market value of the debt buyer.~~

1 ~~(3) In the case of any successful action to enforce the foregoing~~
2 ~~liability, the costs of the action, together with reasonable attorneys’~~
3 ~~fees as determined by the court. Reasonable attorneys’ fees may~~
4 ~~be awarded to a prevailing debt buyer upon a finding by the court~~
5 ~~that the action was brought in bad faith and for the purpose of~~
6 ~~harassment.~~

7 ~~(b) In determining the amount of liability under paragraph (2)~~
8 ~~of subdivision (a), the court shall consider, among other relevant~~
9 ~~factors, the following:~~

10 ~~(1) In any individual action under subparagraph (A) of paragraph~~
11 ~~(2) of subdivision (a), the frequency and persistence of~~
12 ~~noncompliance by the debt buyer, and the nature of the~~
13 ~~noncompliance.~~

14 ~~(2) In any class action under subparagraph (A) of paragraph (2)~~
15 ~~of subdivision (a), the frequency and persistence of noncompliance~~
16 ~~by the debt buyer, the nature of the noncompliance, the resources~~
17 ~~of the debt buyer, and the number of persons adversely affected.~~

18 ~~(c) A debt buyer shall not be held liable in any action brought~~
19 ~~under this title if the debt buyer shows by a preponderance of~~
20 ~~evidence that the violation was not intentional and resulted from~~
21 ~~a bona fide error notwithstanding the maintenance of procedures~~
22 ~~reasonably adapted to avoid any such error.~~

23 ~~(d) An action to enforce any liability created by this title may~~
24 ~~be brought within two years from the last violation.~~

25 ~~1788.64. Any waiver of the provisions of this title is contrary~~
26 ~~to public policy, and is void and unenforceable.~~

27 *SECTION 1. The Legislature finds and declares the following:*

28 *(a) The collection of debt is an appropriate business practice,*
29 *and most entities involved in the collection of debt act within the*
30 *requirements of the law, and respect the rights of consumers.*

31 *(b) According to the Federal Trade Commission and the*
32 *Department of Consumer Affairs, the debt collection industry is,*
33 *however, the source of more consumer inquiries in California than*
34 *any other industry. A significant source of consumer complaints*
35 *concerns attempts to collect debt that is not owed, has been*
36 *discharged, or is impermissible.*

37 *(c) Debt collection lawsuits brought by debt buyers have*
38 *increased sharply in recent years, and this increase has resulted*
39 *in a significant strain on the state’s courts.*

1 (d) Many collection lawsuits brought by some debt buyers are
 2 not supported by sufficient documentation to establish the
 3 provenance of the alleged debt. In a significant percentage of these
 4 lawsuits, defendants never appear, resulting in default judgments
 5 where potential defenses to collection efforts are not raised.

6 (e) To facilitate the collection of debt and ensure the integrity
 7 of the debt collection process, reasonable documentation
 8 establishing the provenance of purchased debt must be secured
 9 before action is taken to collect it. The existence of that
 10 documentation will protect consumers, provide needed guidance
 11 to courts, and establish clear standards for debt buyers and the
 12 collection industry.

13 SEC. 2. Title 1.6C.5 (commencing with Section 1788.50) is
 14 added to Part 4 of Division 3 of the Civil Code, to read:

15
 16 TITLE 1.6C.5. FAIR DEBT BUYERS PRACTICES ACT

17
 18 1788.50. (a) As used in this title, “debt buyer” means a person
 19 or entity that purchases charged-off consumer loans or consumer
 20 credit accounts, or other delinquent consumer debt.

21 (b) “Debt buyer” includes any direct or indirect parent,
 22 subsidiary, or other affiliate of the person or entity described in
 23 subdivision (a), and any person or entity with an ownership interest
 24 in the purchased debt.

25 (c) Terms defined in Title 1.6C (commencing with Section 1788)
 26 shall apply to this title.

27 (d) The provisions of this title shall apply to debt buyers on all
 28 debt sold or resold on or after July 1, 2013.

29 1788.52. (a) A debt buyer shall not make any written statement
 30 to a debtor in an attempt to collect a consumer debt unless the
 31 debt buyer possesses the following information:

32 (1) That the debt buyer is the sole owner of the debt at issue, or
 33 has authority to assert the rights of all owners of the debt.

34 (2) The debt balance at charge off, including an explanation of
 35 all post-charge-off fees and charges, and the basis for their
 36 imposition.

37 (3) The date of default or the date of the last payment.

38 (4) The name of the creditor at the time of charge off, and the
 39 charge-off creditor’s account number associated with the debt.

1 (5) *The name and address of the debtor as it appeared in the*
2 *creditor’s records at the time of charge off. For debt sold or resold*
3 *prior to July 1, 2013, the debtor’s name and last known address*
4 *will satisfy the requirements of this paragraph.*

5 (6) *The names of all persons or entities that purchased the debt*
6 *after charge off, including the plaintiff debt buyer.*

7 (b) *A debt buyer shall not make any written statement to a debtor*
8 *in an attempt to collect a consumer debt unless the debt buyer has*
9 *access to, and can produce in accordance with subdivision (c),*
10 *the following documents:*

11 (1) *Business records evidencing the information required by*
12 *paragraphs (1) to (6), inclusive, of subdivision (a).*

13 (2) *A copy of a contract or other document evidencing the*
14 *debtor’s agreement to the debt. If the claim is based on debt for*
15 *which no signed contract or agreement exists, a copy of a document*
16 *provided to the debtor while the account was active, demonstrating*
17 *that the debt was incurred by the debtor. The most recent monthly*
18 *statement on a credit account recording a purchase transaction,*
19 *last payment, or balance transfer shall be deemed sufficient to*
20 *satisfy this requirement.*

21 (c) *A debt buyer shall provide the documents identified in*
22 *subdivision (b) to the debtor without charge within 15 calendar*
23 *days of receipt of a debtor’s written request for information*
24 *regarding, or proof of, the debt. If the debt buyer cannot provide*
25 *the documents within 15 calendar days, the debt buyer shall cease*
26 *collection of the debt until the debt buyer provides the debtor the*
27 *documentation described in subdivision (b). A debt buyer shall*
28 *provide an active postal address and an active e-mail address to*
29 *which such requests can be sent.*

30 (d) *A debt buyer’s first written communication with the debtor*
31 *shall include the following notice, in 12-point type, on the first*
32 *page, with the words “VERY IMPORTANT” in bolded print:*

33
34 **NOTICE TO CONSUMER**

35
36 **DEPENDING ON HOW MUCH TIME HAS PASSED SINCE**
37 **YOUR DEBT BECAME PAST DUE, YOU MAY HAVE THE**
38 **ABILITY TO STOP A DEBT COLLECTION LAWSUIT OR OTHER**
39 **LEGAL ACTION AGAINST YOU. THIS RIGHT IS CALLED A**
40 **“STATUTE OF LIMITATIONS” DEFENSE. HOWEVER,**

1 FAILURE TO PAY YOUR DEBTS MAY NEGATIVELY IMPACT
2 YOUR CREDIT RATING FOR A PERIOD OF UP TO SEVEN
3 YEARS FROM THE DATE WHEN THE DEBT WAS CHARGED
4 OFF OR PLACED FOR COLLECTION.

5 IT IS VERY IMPORTANT THAT YOU RESPOND TO THESE
6 DOCUMENTS. TO GET HELP, YOU CAN CONSULT AN
7 ATTORNEY, VISIT A LOCAL SELF-HELP CENTER, OR VISIT
8 [HTTP://WWW.COURTS.CA.GOV/SELFHELP.HTM](http://www.courts.ca.gov/selfhelp.htm) FOR MORE
9 INFORMATION.

10

11 (e) In the event of a conflict between the requirements of
12 subdivision (c) and federal law, so that it is impracticable to
13 comply with both, the requirements of federal law shall prevail.

14 1788.54. (a) All settlement agreements between a debt buyer
15 and a debtor shall be documented in open court or otherwise
16 reduced to writing. A debt buyer that receives payment on a debt
17 shall provide, within 30 calendar days, a receipt or monthly
18 statement, to the individual from whom payment is received. The
19 receipt or statement shall clearly and conspicuously show the
20 amount and date paid, the name of the entity paid, the current
21 account number, the name of the charge-off creditor, the account
22 number issued by the charge-off creditor, and the remaining
23 balance owing, if any. The receipt or statement may be provided
24 electronically, at the debtor's option.

25 (b) A debt buyer that accepts a payment as payment in full, or
26 as a full and final compromise of the debt, shall provide, within
27 30 calendar days, a final statement that complies with subdivision
28 (a). A debt buyer shall not sell an interest in a resolved debt, or
29 any confidential personal or financial information related to the
30 resolved debt.

31 1788.56. A debt buyer shall not bring suit or initiate an
32 arbitration or other legal proceeding to collect a consumer debt
33 if the applicable statute of limitations on the debt buyer's claim
34 has expired.

35 1788.58. In an action brought by a debt buyer on a consumer
36 debt:

37 (a) The complaint shall allege all of the following:

38 (1) That the plaintiff is a debt buyer.

1 (2) *The nature of the underlying debt and the consumer*
2 *transaction or transactions from which it is derived, in a short and*
3 *plain statement.*

4 (3) *That the debt buyer is the sole owner of the debt at issue, or*
5 *has authority to assert the rights of all owners of the debt.*

6 (4) *The debt balance at charge off, including an explanation of*
7 *all post-charge-off fees and charges, and the basis for their*
8 *imposition.*

9 (5) *The date of default or the date of the last payment.*

10 (6) *The name of the creditor at the time of charge off, and the*
11 *charge-off creditor’s account number associated with the debt.*

12 (7) *The name and address of the debtor as they appeared in the*
13 *creditor’s records at the time of charge off. For debt sold or resold*
14 *prior to July 1, 2013, the debtor’s name and last known address*
15 *will satisfy the requirements of this paragraph.*

16 (8) *The names of all persons or entities that purchased the debt*
17 *after charge off, including the plaintiff debt buyer.*

18 (9) *That the debt buyer has complied with Section 1788.52.*

19 (b) *The document described in paragraph (2) of subdivision (b)*
20 *of Section 1788.52, shall be attached to the complaint.*

21 (c) *The following separate written notice shall be served with*
22 *the complaint in at least 12-point type, with the words “VERY*
23 *IMPORTANT” in bolded print:*

24
25 **NOTICE TO CONSUMER**

26
27 *DEPENDING ON HOW MUCH TIME HAS PASSED SINCE*
28 *YOUR DEBT BECAME PAST DUE, YOU MAY HAVE THE*
29 *ABILITY TO STOP A DEBT COLLECTION LAWSUIT OR OTHER*
30 *LEGAL ACTION AGAINST YOU. THIS RIGHT IS CALLED A*
31 *“STATUTE OF LIMITATIONS” DEFENSE. HOWEVER,*
32 *FAILURE TO PAY YOUR DEBTS MAY NEGATIVELY IMPACT*
33 *YOUR CREDIT RATING FOR A PERIOD OF UP TO SEVEN*
34 *YEARS FROM THE DATE OF WHEN THE DEBT WAS*
35 *CHARGED OFF OR PLACED FOR COLLECTION.*

36 *IT IS VERY IMPORTANT THAT YOU RESPOND TO THESE*
37 *DOCUMENTS. TO GET HELP, YOU CAN CONSULT AN*
38 *ATTORNEY, VISIT A LOCAL SELF-HELP CENTER, OR VISIT*
39 *HTTP://WWW.COURTS.CA.GOV/SELFHELP.HTM FOR MORE*
40 *INFORMATION.*

1

2 (d) In the event of a conflict between the requirements of
3 subdivision (c) and federal law, so that it is impracticable to
4 comply with both, the requirements of federal law shall prevail.

5 (e) The requirements of this title shall not be deemed to require
6 the disclosure in public records of personal, financial, or medical
7 information, the privacy of which is protected by any state or
8 federal law.

9 1788.60. (a) In an action initiated by a debt buyer, no default
10 or other judgment may be entered against a debtor unless
11 authenticated business records have been admitted into evidence
12 to establish the facts required to be alleged by paragraphs (3) to
13 (9), inclusive, of subdivision (a) of Section 1788.58.

14 (b) No default or other judgment may be entered against a
15 debtor unless the document described in paragraph (2) of
16 subdivision (a) of Section 1788.52 is admitted into evidence.

17 (c) In any action on a consumer debt, if a debt buyer plaintiff
18 seeks a default judgment and has not complied with the
19 requirements of this title, the court shall not enter a default
20 judgment for the plaintiff and may, in its discretion, dismiss the
21 action.

22 1788.62. (a) A debt buyer that violates any provision of this
23 title with respect to any person shall be liable to that person in an
24 amount equal to the sum of the following:

25 (1) Any actual damages sustained by that person as a result of
26 the violation, including, but not limited to, the amount of any
27 judgment obtained by the debt buyer as a result of a time-barred
28 suit to collect a debt from that person.

29 (2) Additional damages in an amount as the court may allow,
30 which shall not be less than one hundred dollars (\$100) nor greater
31 than one thousand dollars (\$1,000).

32 (b) In the case of a class action, a debt buyer that violates any
33 provision of this title shall be liable for any additional damages
34 for each named plaintiff as provided for in paragraph (2) of
35 subdivision (a). If the court finds that the debt buyer engaged in
36 a pattern and practice of violating any provision of this title, the
37 court may award additional damages to the class in an amount
38 not to exceed the lesser of five hundred thousand dollars
39 (\$500,000) or 1 percent of the net worth of the debt buyer.

1 (c) (1) *In the case of any successful action to enforce liability*
2 *under this section, the court shall award costs of the action,*
3 *together with reasonable attorney's fees as determined by the*
4 *court.*

5 (2) *Reasonable attorney's fees may be awarded to a prevailing*
6 *debt buyer upon a finding by the court that the plaintiff's*
7 *prosecution of the action was not in good faith.*

8 (d) *In determining the amount of liability under subdivision (b),*
9 *the court shall consider, among other relevant factors, the*
10 *frequency and persistence of noncompliance by the debt buyer,*
11 *the nature of the noncompliance, the resources of the debt buyer,*
12 *and the number of persons adversely affected.*

13 (e) *A debt buyer shall have no civil liability under this section*
14 *if the debt buyer shows by a preponderance of evidence that the*
15 *violation was not intentional and resulted from a bona fide error,*
16 *notwithstanding the maintenance of procedures reasonably adopted*
17 *to avoid any error.*

18 (f) *An action to enforce any liability created by this title shall*
19 *be brought within one year from the last violation.*

20 (g) *Recovery in an action brought under the Rosenthal Fair*
21 *Debt Collection Practices Act (Title 1.6C (commencing with*
22 *Section 1788) or the federal Fair Debt Collection Practices Act*
23 *(15 U.S.C. Sec. 1692 et seq.) shall preclude recovery for the same*
24 *acts in an action brought under this title.*

25 *1788.64. Any waiver of the provisions of this title is contrary*
26 *to public policy, and is void and unenforceable.*

27 ~~SEC. 2.~~

28 *SEC. 3.* Section 581.5 is added to the Code of Civil Procedure,
29 to read:

30 581.5. In a case involving consumer debt, as defined in Section
31 1788.2 of the Civil Code, and as regulated under Title 1.6C.5
32 (commencing with Section 1788.50) of Part 4 of Division 3 of the
33 Civil Code, if the defendant debtor appears for trial on the
34 scheduled trial date, and the plaintiff debt buyer either fails to
35 appear or is not prepared to proceed to trial, and the court does not
36 find a good cause for continuance, the court may, in its discretion,
37 dismiss the action with or without prejudice. Notwithstanding any
38 other law, in this instance, the court may award the defendant
39 debtor's costs of preparing for trial, including, but not limited to,
40 lost wages and transportation expenses.

1 ~~SEC. 3.~~

2 *SEC. 4.* Section 700.010 of the Code of Civil Procedure is
3 amended to read:

4 700.010. (a) At the time of levy pursuant to this article or
5 promptly thereafter, the levying officer shall serve a copy of the
6 following on the judgment debtor:

- 7 (1) The writ of execution.
- 8 (2) A notice of levy.
- 9 (3) If the judgment debtor is a natural person, a copy of the form
10 listing exemptions prepared by the Judicial Council pursuant to
11 subdivision (c) of Section 681.030, the list of exemption amounts
12 published pursuant to subdivision (e) of Section 703.150, a copy
13 of the form that the judgment debtor may use to make a claim of
14 exemption pursuant to Section 703.520, and a copy of the form
15 the judgment debtor may use to provide a financial statement
16 pursuant to Section 703.530.

17 (4) Any affidavit of identity, as defined in Section 680.135, for
18 names of the debtor listed on the writ of execution.

19 (b) Service under this section shall be made personally or by
20 mail.

21 ~~SEC. 4.~~

22 *SEC. 5.* Section 706.103 of the Code of Civil Procedure is
23 amended to read:

24 706.103. (a) The levying officer shall serve upon the
25 designated employer all of the following:

- 26 (1) The original and one copy of the earnings withholding order.
- 27 (2) The form for the employer’s return.
- 28 (3) The notice to employee of earnings withholding order.
- 29 (4) A copy of the form that the judgment debtor may use to
30 make a claim of exemption.
- 31 (5) A copy of the form the judgment debtor may use to provide
32 a financial statement.

33 (b) At the time the levying officer makes service pursuant to
34 subdivision (a), the levying officer shall provide the employer with
35 a copy of the employer’s instructions referred to in Section
36 706.127. The Judicial Council may adopt rules prescribing the
37 circumstances when compliance with this subdivision is not
38 required.

1 (c) No earnings withholding order shall be served upon the
2 employer after the time specified in subdivision (b) of Section
3 699.530.

4 ~~SEC. 5.~~

5 *SEC. 6.* Section 706.104 of the Code of Civil Procedure is
6 amended to read:

7 706.104. Any employer who is served with an earnings
8 withholding order shall:

9 (a) Deliver to the judgment debtor a copy of the earnings
10 withholding order, the notice to employee of earnings withholding,
11 a copy of the form that the judgment debtor may use to make a
12 claim of exemption, and a copy of the form the judgment debtor
13 may use to provide a financial statement within 10 days from the
14 date of service. If the judgment debtor is no longer employed by
15 the employer and the employer does not owe the employee any
16 earnings, the employer is not required to make such delivery. The
17 employer is not subject to any civil liability for failure to comply
18 with this subdivision. Nothing in this subdivision limits the power
19 of a court to hold the employer in contempt of court for failure to
20 comply with this subdivision.

21 (b) Complete the employer's return on the form provided by
22 the levying officer and mail it by first-class mail, postage prepaid,
23 to the levying officer within 15 days from the date of service. If
24 the earnings withholding order is ineffective, the employer shall
25 state in the employer's return that the order will not be complied
26 with for this reason and shall return the order to the levying officer
27 with the employer's return.

28 ~~SEC. 6.~~

29 *SEC. 7.* Section 706.108 of the Code of Civil Procedure is
30 amended to read:

31 706.108. (a) If a writ of execution has been issued to the county
32 where the judgment debtor's employer is to be served and the time
33 specified in subdivision (b) of Section 699.530 for levy on property
34 under the writ has not expired, a judgment creditor may deliver
35 an application for issuance of an earnings withholding order to a
36 registered process server who may then issue an earnings
37 withholding order.

38 (b) If the registered process server has issued the earnings
39 withholding order, the registered process server, before serving
40 the earnings withholding order, shall deposit with the levying

1 officer a copy of the writ of execution, the application for issuance
2 of an earnings withholding order, and a copy of the earnings
3 withholding order, and shall pay the fee provided by Section 26750
4 of the Government Code.

5 (c) A registered process server may serve an earnings
6 withholding order on an employer whether the earnings
7 withholding order was issued by a levying officer or by a registered
8 process server, but no earnings withholding order may be served
9 after the time specified in subdivision (b) of Section 699.530. In
10 performing this function, the registered process server shall serve
11 upon the designated employer all of the following:

12 (1) The original and one copy of the earnings withholding order.

13 (2) The form for the employer's return.

14 (3) The notice to the employee of the earnings withholding
15 order.

16 (4) A copy of the form that the judgment debtor may use to
17 make a claim of exemption.

18 (5) A copy of the form the judgment debtor may use to provide
19 a financial statement.

20 (6) A copy of the employer's instructions referred to in Section
21 706.127, except as otherwise prescribed in rules adopted by the
22 Judicial Council.

23 (d) Within five court days after service under this section, all
24 of the following shall be filed with the levying officer:

25 (1) The writ of execution, if it is not already in the hands of the
26 levying officer.

27 (2) Proof of service on the employer of the papers listed in
28 subdivision (c).

29 (3) Instructions in writing, as required by the provisions of
30 Section 687.010.

31 (e) If the fee provided by Section 26750 of the Government
32 Code has been paid, the levying officer shall perform all other
33 duties required by this chapter as if the levying officer had served
34 the earnings withholding order. If the registered process server
35 does not comply with subdivisions (b), where applicable, and (d),
36 the service of the earnings withholding order is ineffective and the
37 levying officer is not required to perform any duties under the
38 order and may terminate the order and may release any withheld
39 earnings to the judgment debtor.

1 (f) The fee for services of a registered process server under this
2 section shall be allowed as a recoverable cost pursuant to Section
3 1033.5.

4 ~~SEC. 7.~~

5 *SEC. 8.* Section 706.122 of the Code of Civil Procedure is
6 amended to read:

7 706.122. The “notice to employee of earnings withholding
8 order” shall contain a statement that informs the employee in
9 simple terms of the nature of a wage garnishment, the right to an
10 exemption, the procedure for claiming an exemption, and any other
11 information the Judicial Council determines would be useful to
12 the employee and appropriate for inclusion in the notice, including
13 all of the following:

14 (a) The named employer has been ordered to withhold from the
15 earnings of the judgment debtor the amounts required to be
16 withheld under Section 706.050, or such other amounts as are
17 specified in the earnings withholding order, and to pay these
18 amounts over to the levying officer for transmittal to the person
19 specified in the order in payment of the judgment described in the
20 order.

21 (b) The manner of computing the amounts required to be
22 withheld pursuant to Section 706.050.

23 (c) The judgment debtor may be able to keep more or all of the
24 judgment debtor’s earnings if the judgment debtor proves that the
25 additional earnings are necessary for the support of the judgment
26 debtor or the judgment debtor’s family supported in whole or in
27 part by the judgment debtor.

28 (d) If the judgment debtor wishes a court hearing to prove that
29 amounts should not be withheld from the judgment debtor’s
30 earnings because they are necessary for the support of the judgment
31 debtor or the judgment debtor’s family supported in whole or in
32 part by the judgment debtor, the judgment debtor shall file with
33 the levying officer an original and one copy of the “judgment
34 debtor’s claim of exemption” and an original and one copy of the
35 “judgment debtor’s financial statement.”

36 ~~SEC. 8.~~

37 *SEC. 9.* The provisions of this act are severable. If any
38 provision of this section or its application is held invalid, that

- 1 invalidity shall not affect other provisions or applications that can
- 2 be given effect without the invalid provision or application.

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